



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1994

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-224

Dear Ms. Leal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 22503.

Harris County (the "county") received an open records request from a former employee for her personnel file and all documents relating to her employment with the county. The county released portions of her personnel file and contends that all other responsive information may be withheld from the public under sections 552.101, 552.103(a), and 552.107 of the Government Code (formerly sections 3(a)(1), 3(a)(3), and 3(a)(7), V.T.C.S. article 6252-17a). The county has submitted the responsive documents for review.

You first argue that section 552.103(a) excepts from disclosure all of the documents you submitted for review. We disagree. To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that proceeding. Open Records Decision No. 555 (1990) at 2. However, information cannot be withheld under section 552.103(a) if the opposing party in the litigation has

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

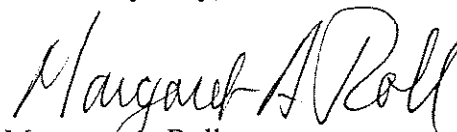
previously had access to it; absent special circumstances, once the information has been obtained by all of the parties to litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). In this instance, the documents you submitted for review relate to a complaint that is pending before the Equal Employment Opportunity Commission ("EEOC"), and a complaint pending before the EEOC indicates that litigation is reasonably anticipated. Open Records Decision No. 386 (1983). However, some of the documents you seek to withhold show on their face that the opposing party in this anticipated litigation has had access to them. Therefore, you may withhold only the documents that do not show that the opposing party has had access to them. We have marked these documents for your convenience.

Next, you argue that the documents contained in exhibit "B" are confidential under sections 706(b), 709(d), and 709(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(b), -8(d), -8(e), and thus, are excepted from disclosure by section 552.101 of the Government Code. However, none of the sections of Title VII that you refer to apply to the documents held by Harris County or the Harris County Constable. In this case, Harris County and the Harris County Constable are in the role of the employer accused of discrimination. Sections 706(b), 709(d), and 709(e) restrict the disclosure of information only by those entities, or the agents or employees of those entities, charged with the enforcement of Title VII. Open Records Decision Nos. 245 (1980) at 2; 155 (1977) at 2. Therefore, none of the documents contained in exhibit "B" are confidential under Title VII, and you may not withhold any of the documents contained in exhibit "B" under section 552.101.

Finally, you argue that the documents contained in exhibit "C" should be withheld from disclosure as attorney work product under sections 552.101 and 552.107. However, information that constitutes attorney work product is excepted from disclosure by section 552.103(a), not by sections 552.101 and 552.107. Open Records Decision Nos. 575 at 2, 574 at 6 (1990). Therefore, you may not withhold any information as attorney work product that we have not already determined you may withhold under section 552.103.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Margaret A. Roll".

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/JCH/rho

Ref.: ID# 22503, ID# 23954

Enclosures: Marked documents

cc: Ms. Dina Lorraine Hamilton
9115 Woodhouse Drive
Spring, Texas 77379
(w/o enclosures)